

**SACRAMENTO POLICE DEPARTMENT
ADMINISTRATIVE PENALTY APPEAL HEARING
RECORD OF DECISION**

IN THE MATTER OF:

SPD REPORT #: 18-259665

APPELLANT: Tien Duc Dao and Huang Hsuangchi

VIOLATION ADDRESS: 6135 Elder Creek Rd

SACRAMENTO CITY CODE SECTION(S): 8.132.040

PROPOSED ADMINISTRATIVE PENALTY: \$281,000

HEARING EXAMINER: Camille Dixon

HEARING DATE: December 6, 2018

This matter was heard at a noticed public hearing. The following witnesses submitted a written explanation, appeared and/or testified at the hearing on behalf of either the City or the Appellant as noted below. Any written materials submitted with the protest or at the hearing were reviewed by the Hearing Examiner and are on file in the offices of the City of Sacramento.

City Staff: Officer Michael Frazer – Sacramento Police Department
Emilio Camacho – Deputy City Attorney

Appellants: Tien Duc Dao
Huang Hsuangchi
Julie A Goerlinger – Attorney

TESTIMONY SUMMARY

City Staff:

Sacramento Police Department (SPD) Officer Frazer testified that on August 01, 2018, SPD received information regarding a possible illegal cannabis cultivation operation occurring at 6135 Elder Creek Rd, Sacramento, California.

During Officer Frazer's investigation, he found that the Hsiangchi Huang and Tien Duc Dao have owned 6135 Elder Creek Rd since September 21, 2015, per the Sacramento County Parcel Viewer.

On August 17, 2018, the Sacramento Police Department executed a search warrant at 6135 Elder Creek Rd on suspicion of an illegal cannabis cultivation. Officers located 568 cannabis plants. This is a single-story home where several of the rooms were being used to cultivate marijuana. There was an additional outbuilding in the backyard which had been completely repurposed for marijuana cultivation. Photos were taken on scene.

Officer Trejo requested the Sacramento Municipal Utility District, otherwise known as SMUD, to investigate the historic power usage of this property. SMUD provided power usage data going back to January of 2015. SMUD advised their power usage data only goes back the last three and half years. The power usage for this property has been high month after month and is consistent to indoor marijuana cultivation going back to November of 2015.

Pursuant to SCC 8.132.050 (E)(1), an administrative penalty in the amount of \$281,000 (i.e., \$500 per plant over six plants) was issued to the owner of the property for a violation of SCC 8.132.040(B). The citation was posted at the residence. The City of Cannabis Policy Enforcement also mailed a copy of the administrative penalty to the property owner. The administrative penalty in this case is appropriate due to the potential high proceeds to be gained from the cultivation of illegal cannabis.

Deputy City Attorney:

Deputy City Attorney Emilio Camacho asked property owner Tien Duc Dao when he purchased this property, and does he own his home in San Jose. He also asked if he had a local point of contact in Sacramento or a Property Manager.

Appellant:

Julie A. Goerlinger, Attorney for the property owners Tien Duc Dao and Hsiangchi Huang, asked her client Tien Duc Dao where he resides. Tien Duc Dao stated that he lives in San Jose, California with his wife and kids, has never lived in 6135 Elder Creek Road and the property is currently vacant.

Tien Dao stated that until August 2018 his last tenant Hong Vong resided at his property and the lease agreement was signed June 2017. The rent was \$1,400 and then increased to \$1,500. He also stated that he conducted an inspection of the property before the tenant moved in and stated he would go to the property two to three times in a year prior to renting to Mr. Vong. Tien Dao stated that the house is not registered with the City's Rental Housing Inspection Program and there was not a property manager to look after his property. He stated that his neighbor was looking after his property and would call him if there is something odd going on.

Tien Dao stated he purchased the property in 2015 and also owns the home in San Jose, CA along with his wife. He stated that he has hired an insurance adjuster to assist in repairing the house.

Tien Dao stated that since June of 2017 he was unable to conduct an inspection of the property due to his son's medical issues. His son's treatments did not end until June of 2018.

Tien Dao specified that he found out about the illegal cannabis cultivation at his property after receiving the penalty letter from the City. He also stated that he never knew that his tenant was growing marijuana.

Ms. Goerlinger submitted a binder with documents to support Mr. Dao's claims.

FINDINGS OF FACT:

After examining the evidence submitted and arguments offered by City staff, the appellant and witness, if any; the owner's efforts, or lack thereof, to comply with the City Code; the staff time and costs incurred in investigating the violation; the extent, if any, to which the fine or penalty would impose a substantial economic hardship; the seriousness of the violation; the Hearing Examiner hereby makes the following findings:


- A. The Administrative Penalty was properly issued and served.
- B. The Appellant was unable to inspect his property between June of 2017 through June of 2018 due to his son's illness. Also, the SMUD bill was paid by his tenant. As a result, he had no ability to discover that his property was being improperly used to cultivate cannabis.

DECISION:

The Administrative Penalty issued on August 17, 2018 in the amount of \$281,000 shall be reduced to \$0.

IT IS SO ORDERED:

Dated: January 4, 2019



Camille Dixon
Hearing Examiner

PAYMENT: ☐ Applicable ☒ Not Applicable

APPEAL

If you desire to seek judicial review of the Hearing Examiner's decision, you must file a petition for judicial review with the Sacramento County Superior Court no later than the 90th day following the date of this decision. (California Code of Civil Procedures Section 1094.5 & 1094.6)